

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RODERICK CHISHOLM,

Plaintiff,

vs.

**SAFECO INSURANCE COMPANY
OF INDIANA,**

Defendant.

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CASE NO. _____

DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-81, Defendant Safeco Insurance Company of Indiana (“Safeco” or “Defendant”) files this Notice of Removal, hereby removing this action from the 442nd Judicial District Court of Denton County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Roderick Chisholm (“Plaintiff”) and Safeco, and the amount in controversy exceeds \$75,000 exclusive of interest and costs. In support of its Notice of Removal, Defendant respectfully shows the Court as follows

**I.
INTRODUCTION**

This dispute arises out of a claim for alleged storm damage to property located at 210 Oakmont Dr., Trophy Club, Texas 76262-5472 (the “Property”). Plaintiff alleges causes of action for breach of contract, violations of Sections 541 and 542 of the Texas Insurance Code, violations of the DTPA, and breach of the common-law duty of good

faith and fair dealing by, among other things, failing to pay Plaintiff's claim for damages allegedly resulting from storm damage.

On August 22, 2017, Plaintiff filed his Original Petition in the 442nd Judicial District Court of Denton County, Texas naming Safeco as a defendant. Safeco was served with a citation and a copy of Plaintiff's Original Petition on August 28, 2017 through its registered agent for service of process. On September 15, 2017, Safeco timely filed an answer to Plaintiff's Original Petition. This Notice of Removal is being filed within thirty (30) days of service of the Original Petition on Safeco, and is thus timely filed under 28 U.S.C. § 1446(b). As explained below, removal is proper because there is complete diversity of citizenship between the parties, and it is apparent from the face of Plaintiff's Original Petition that the amount in controversy exceeds \$75,000.00.

II.

BASIS FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

Plaintiff has alleged in his Original Petition that he is an individual residing in Denton County, Texas. *See* Plaintiff's Original Petition at § II. PARTIES. Thus, for diversity purposes, Plaintiff is a citizen of Texas. Safeco Insurance Company of Indiana is a corporation organized under the laws of the State of Indiana, with its principal place of business in Boston, Massachusetts. For diversity purposes, Safeco is a citizen of Massachusetts and Indiana. Accordingly, there exists complete diversity of citizenship between Plaintiff and Safeco.

B. AMOUNT IN CONTROVERSY

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff's complaint. *See De Aguilar v. Boeing*

Co., 47 F.3d 1404, 1411-12 (5th Cir. 1995). Here, it is apparent from the face of Plaintiff's Original Petition that his claims exceed \$75,000.00. Plaintiff specifically pleads that he "seeks monetary relief over \$200,000.00 but more than \$1,000,000 . . ." Plaintiff's Original Petition at § I.

Therefore, removal of this action is proper under 28 U.S.C. § 1441(a). This is a civil action brought in state court and this Court has original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332(a). In addition, Plaintiff's citizenship is diverse from Safeco. Finally, as alleged in his petition and based upon discussions with Plaintiff's counsel, Plaintiff potentially seeks to recover in excess of \$75,000.00 from Defendant. Therefore, the amount in controversy in this case exceeds \$75,000.00.

III.

CONSENT TO REMOVAL UNNECESSARY

Safeco is the only defendant named in Plaintiff's Original Petition; thus, no additional consent is needed for removal.

IV.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

As required by Local Rule CV-81, filed concurrently with this Notice of Removal is a completed civil cover sheet. Additionally, the following exhibits are attached:

- **EXHIBIT A:** Supplemental Civil Case Cover Sheet – listing all parties in this case and the current status of the state court proceeding; listing of attorneys in this case, including each such attorney's bar number, address, telephone number and party represented; and the name and address of the state court from which this case is being removed;
- **EXHIBIT B:** A certified copy of the Register of Actions in the state court action; and
- **EXHIBITS C-1 – C-4:** A copy of each document filed in the state court action.

V.
REQUEST FOR RELIEF

Based on the foregoing, Defendant Safeco Insurance Company of Indiana respectfully requests that the above-captioned action now pending in the 442nd Judicial District Court, Denton County, Texas be removed to the United States District Court for the Eastern District of Texas, Sherman Division. Safeco further requests all such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Colin R. Batchelor

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

In accordance with the FEDERAL RULES OF CIVIL PROCEDURE, on September 26, 2017, a true and correct copy of the above and foregoing instrument was served *via facsimile or electronic service* upon:

ATTORNEYS FOR PLAINTIFF

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/s/ Colin R. Batchelor

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